HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 5628 of 2007

DATED: 23-03-2007

Between:

K.Varalakshmi and others

…Petitioner

and

The Land Acquisition Officer-cum-
Revenue Divisional Officer,
Chittoor and another

…Respondents.

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 5628 of 2007

ORAL ORDER:

The 12 petitioners assail the Form-3 notice issued soliciting objections to the acquisition proposals, for acquisition of the lands of the petitioners for widening and strengthening of the Puttur - Karvetinagaram R & B Road, Puttur Town. The notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') was published on 27-9-2006 invoking urgency and dispensing with the enquiry under Section 5-A of the Act. The petitioners filed W.P.No.20973 of 2006 challenging the notification under Section 4 (1) in particular, on the ground that urgency was irrationally invoked. This Court disposed of the writ petition at the stage of admission by the judgment dated 11-10-2006 declaring the invocation of urgency to be irrational and directing the respondents to issue a notice under Section 5-A of the Act soliciting objections to the acquisition proposal and directing the respondents to take an appropriate decision duly communicating the decision to the petitioners simultaneously with the recommendations made on the eventual decision under Section 5-A (2) of the Act.

Thereafter a notice in Form-3 was issued to the petitioners on 3-11-2006 calling upon them to file their objections if any, within 15 days from the date of publication of the notification under Section 4(1) of the Act. As the publication of the notification under Section 4(1) of the Act was dated 27-9-2006, the Form-3 notice issued on 3-

11-2006 calling upon them to file their objections within 15 days was clearly an abuse of administrative discretion and subversion of the legal process. Assailing the Form-3 notice as contumacious of the judgment of this Court in Writ Petition No. 20973 of 2006, the petitioners filed C.C.No.1237 of 2006. By the order dated 2-1-2007, this Court dismissed the contempt case observing that Form-3 notice was wholly defective and did not constitute a reasonable opportunity to the petitioners to lodge their objections in fulfillment of a salutary statutory process. Thereafter, the respondents issued the impugned Form-3 notice on 6-3-2007 calling upon the petitioners to lodge their objections within 15 days from the date of receipt of this notice. The petitioners admit to have received this notice on 10-3-2007. As per the terms of the notice, the petitioners are required to submit their objections by 25-3-2007.

The contention of Sri K.S.Gopalakrishnan, the learned counsel for the petitioner is somewhat interesting. It is contended that the petitioners ought to have given 30 days notice as contemplated in Section 5-A of the Act reckoned at least from the date of the order in C.C.No.1237 of 2006 i.e., 30 days from 2-1-2007. This contention is ex facie misconceived. Section 5-A of the Act enables the owners or a person interested to object to the acquisition process within 30 days of the publication of the notification under Section 4(1) of the Act. In a factual context whether urgency is irrationally invoked, it is a developed practice, that the Court invalidates the invocation of urgency and dispensing with 5-A enquiry without invalidating the draft notification under Section 4(1) of the Act. As a consequence, the acquisition authority is obligated to issue a notice under Section 5-A of the Act affording reasonable opportunity. There is no statutory mandate either expressly or by a compelling implication that 30 days notice must be afforded from the date of publication of the draft notification under

Section 4(1) of the Act.

The learned counsel for the petitioners have invited the attention of this Court to Rule 1 of the Rules issued by the Government of Andhra Pradesh in purported exercise of the powers under Section 55 of the Act. Rule 1 reads as under:

> "Immediately after the publication of the notification under Section 4 (1), the Collector shall issue a notice stating that the land is needed or is likely to be needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days after the issue of the notification a statement in writing of their objections, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality, and copies thereof fixed up in the office of the Collector, the Tahsildar, and in the nearest police station."

The underlying assumption of this rule is its applicability to a context where urgency is not invoked and Section 5-A process is followed. To circumstances in which initially Section 5-A notice is dispensed with by the State and the Court finds such invocation of urgency and dispensing with the opportunity under Section 5-A of the Act to be invalid, Rule 1 has no application. When this Court had directed that notice should be issued, what all is contemplated is that the respondents should issue a reasonable notice enabling the persons interested to respond with their objections to the acquisition process. In the case on hand, the impugned Form-3 notice affords the petitioners 15 days time from the date of receipt of that notice. The petitioners would have formulated their objections to the acquisition process since 27-9-2006 when the initial notification under Section 4(1) of the Act was issued. In the totality of the circumstances, the affording of 15 days time from the date of receipt of the Form-3 notice now issued does not appear

unreasonable. It is also not in violation of any statutory mandate. There is thus no infirmity in the impugned notice.

Another contention urged by the learned counsel for the petitioners is that the impugned notice has been issued by the Revenue Divisional Officer-cum-Land Acquisition Officer, Chittoor and that the competent authority is only the Collector. Section 5-A(2) of the Act obligates the Collector to consider any objection made under Section 5-A(1) of the Act and thereafter to submit a report to the appropriate Government containing his recommendations on the objections together with the record of proceedings. The decision making process in the drawing up of the report to the appropriate Government is consecrated to the District Collector. The issuing of a notice calling for objections, and receiving the objections, is not a critical process or component substantive or procedural. It is a ministerial process. In the circumstances and on the above analysis, issuance of notice under Section 5-A of the Act soliciting objections from the petitioners by the RDO, does not suffer from any substantive infirmity warranting interference.

There are no merits in this writ petition. The writ petition is accordingly dismissed at the admission stage. There shall be no order as to costs.

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GODA RAGHURAM, J

23-03-2007
GRR